

MARK UPMARK UP

RULES AND REGULATIONS

FOR THE NORTHEAST DELTA ZONE OF ARKANSAS FOR

BOLL WEEVIL ERADICATION IN 2004~~Background~~

~~Efforts to pass a referendum in Eastern Craighead County and Mississippi County have included extensive research from the University of Arkansas Boll Weevil Eradication Technical Advisory Committee, initiative by leadership in this area, and the offer of an unprecedented grant from adjoining states. Unfortunately, a 2/3 majority approval of a referendum cannot be achieved in Eastern Craighead County and Mississippi County within time periods critical to the Arkansas Boll Weevil Eradication Program. All cotton producing areas surrounding this area are conducting active boll weevil eradication programs. Because of reinfestation patterns of the boll weevil, the lack of an active eradication program in this area causes all adjoining cotton producing areas to be reinfested by the boll weevil. This reinfestation has cost the Arkansas Boll Weevil Eradication Program approximately \$2 million in 2002. The costs to treat reinfestation from this area are projected to be higher in the coming years. These additional costs for an indefinite period will cause an extreme financial hardship for producers in the remainder of the state. Such a financial hardship will jeopardize the Arkansas Boll Weevil Eradication Foundation's ability to maintain eradication success already achieved and complete the Arkansas eradication program.~~

Section I Purpose. Pursuant to Ark. Code Ann. §§ 2-16-601, et seq. and Ark. Code Ann. §§ 2-16-605, et. seq., the purpose of these rules is to develop and establish procedures for the eradication of Boll Weevil within Eastern Craighead County and Mississippi County, to establish assessments to offset program costs, and to provide procedures for the collection of such assessments and to provide penalties for violations of these rules.

Section II Declaration of Boll Weevil as a Plant Pest. Pursuant to Ark. Code Ann. § 2-16-602(a), the Boll Weevil (*Anthonomus grandis* Boheman) is declared to be a plant pest and a nuisance, as is any plant or other regulated article infested therewith or that has been exposed to infestation and is likely to lead to additional infestation. The Arkansas State Plant Board, pursuant to Ark. Code Ann. § 2-16-207, declares the Boll Weevil (*Anthonomus grandis* Boheman) to be a public nuisance.

Section III Definitions. For the purpose of these rules, the following definitions shall apply:

1. "APHIS" means United States Department of Agriculture, Animal and Plant Health Inspection Service.

2. "Arkansas Cotton Grower's Organization, Incorporated, d/b/a Arkansas Boll Weevil Eradication Foundation" means the nonprofit organization comprised of Arkansas Cotton Growers to provide guidance and assist in policy decisions during the eradication program, and certified by the Plant Board pursuant to Ark. Code Ann. § 2-16-612.

3. "Assessment" means the amount charged to each Cotton Grower or landowner to finance, in whole or part, a program to eradicate the Boll Weevil in the regulated area.

4. "Boll Weevil" means *Anthonomus grandis* Boheman in any stage of development.

5. "Boll Weevil Eradication Program" means the program initiated under Ark. Code Ann. § 2-16-601 et seq.

~~6. "Grower's Compliance Certificate" means a document issued or authorized by the Plant Board indicating that a Cotton Grower has complied with the requirements of these rules and the Cotton Grower's cotton may be ginned in Arkansas.~~

~~7.~~ 6. "Compliance Agreement" means a written agreement required between the Plant Board and any person engaged in growing cotton, dealing in, or moving regulated articles wherein the latter agrees to comply with specified provisions to prevent dissemination of the Boll Weevil.

~~8.~~ 7. "Cotton" means any cotton plant or cotton plant product upon which the Boll Weevil is dependent for completion of any portion of its life cycle.

~~9.~~ 8. "Cotton Grower" means any person, who is engaged in and has an economic risk in the business of producing, or causing to be produced, for market, cotton.

~~10.~~ 9. "Eradication Zone" means a geographical area designated by the Plant Board in which the Boll Weevil Eradication Programs will be undertaken and managed pursuant to Ark. Code Ann. § 2-16-610.

~~11.~~ 10. "Exposed" means any area or location subjected to Boll Weevil infestation.

~~12.~~ 11. "Gin Trash" means all waste material produced during the cleaning and ginning of seed cotton. It does not include the lint, cottonseed, or gin waste.

~~13.~~ 12. "Gin Waste" means all forms of unmanufactured cotton fiber (including gin notes) produced at cotton gins, other than baled cotton lint.

~~14.~~ 13. "Infested" means actually infested with a Boll Weevil or so exposed to infestation that it would be reasonable to believe that an infestation exists.

~~15.~~ 14. "Inspector" means any employee of the Plant Board or any other person authorized by the Plant Board to enforce the provision of these rules.

~~16.~~ 15. "Non-Commercial Cotton" means cotton intended for any purposes other than sale or scientific purposes under Section XII of these rules.

~~17.~~ 16. "Permit" means a document issued or authorized by the Plant Board to provide for the movement of regulated articles to restricted designation for limited handling, utilization, or processing.

~~18.~~ 17. "Person" means any individual, partnership, corporation, company, society, or association, or other business entity.

~~19.~~ 18. "Plant Board" means the Arkansas State Plant Board, which is the agricultural plant regulatory agency of the State of Arkansas.

~~20.~~ 19. "Quarantine Area" means any portion of the State of Arkansas designated as such pursuant to Ark. Code Ann. § 2-16-609.

~~21.~~ 20. "Regulated Area" means any portion of an eradication zone designated for any purpose necessary to the execution of the Boll Weevil Eradication Program.

~~22.~~ 21. "Regulated Article" means any article of any character carrying or capable of carrying the Boll Weevil, including, but not limited to, cotton plants, seed cotton, cottonseed, other hosts, gin trash, gin equipment, mechanical cotton pickers, and other equipment associated with cotton production, harvesting, or processing.

~~23.~~ 22. "Seed Cotton" means cotton as it comes from the field prior to ginning.

~~24.~~ 23. "Shipment or Shipments" means the items to be transferred or moved, or the act or process of transferring or moving items from one point to another.

~~25.~~ 24. "USDA" means the United States Department of Agriculture.

~~26.~~ 25. "Used Cotton Equipment" means any equipment used previously to harvest, strip, transport or process cotton.

~~27.~~ 26. "Waiver" means a written authorization which exempts a Person or any organization from compliance with one or more requirements of these rules.

Section IV Eradication Zones. The eradication zone for these regulations are defined as follows:

All of Mississippi County and all of Craighead County east of the St. Francis River.

Section V Submission of Reporting Forms, Assessments, Penalties for Late Payment, Cotton Destruction, and Exemptions.

1. All Cotton Growers in the eradication zone shall be required to participate in an eradication program as set forth herein.

2. Cotton Acreage Reporting. Each Cotton Grower shall submit annual cotton acreage reporting forms, which shall be supplied by the Plant Board, listing the acreage and location of all cotton being grown by the Cotton Grower in the eradication zone.

~~3. Intended Planting. Cotton Growers shall report their intended cotton acreage to the Plant Board, or its designated agent, no later than May 31 of each year in which field operations are in effect in the eradication zone ("Intended Planting Acreage"). Any Cotton Grower who fails to file the Intended Planting Acreage report in the manner prescribed by the Plant Board by May 31 shall be subject to a penalty of up to Three Dollars (\$3.00) for the intended acreage reported prior to certification, otherwise for each planted acre of cotton as of certification of cotton acreage described in paragraph 4 of this Section V.~~

4 3. Certified Acreage. Cotton Growers shall report their actual cotton acreage to the Plant Board, or its designated agent, no later than July 15, of each year in which field operations are in effect in the eradication zone ("Certified Acreage"). Any Cotton Grower who fails to file the certified cotton acreage in the manner prescribed by the Plant Board report by July 15 shall be subject to a penalty of up to Three Dollars (\$3.00) for each planted acre of cotton as of July 15.

~~5. Reporting Penalty. Any Cotton Grower whose Certified Acreage exceeds his Intended Planting Acreage by fifty percent (50%) or fifty (50) acres, whichever is greater, shall, for each certified acre in excess of the grower's Intended Planting Acreage, shall be subject to a penalty of up to Three Dollars (\$3.00) per acre, in addition to the appropriate annual Assessment and any other penalties due.~~

~~6. Reporting Credit. In the event a Cotton Grower's Intended Planting Acreage exceeds the Certified Acreage, the Cotton Grower's final Assessment payment for the year will be reduced to the extent necessary to cause the Cotton Grower to be assessed in such year only for Certified Acreage. Any refunds due to the Cotton Grower as a result of this paragraph 6 must be requested by the Cotton Grower in writing on the form prescribed by the Plant Board. Such request must~~

~~be addressed to the Plant Board and received by the Plant Board no later than July 31 of the year in which the refund is payable. Otherwise, the refund will be reflected as a credit on the Cotton Grower's Assessment for the following year.~~

~~7.4.~~ Assessments for the ~~2003~~ 2004 crop year shall be ~~Eight~~ **Fourteen** Dollars (\$~~8.00~~ **\$14.00**) per acre based on the cotton grower's certified acreage. ~~One half (½) of the assessment shall be paid by the Cotton Grower and one half (½) shall be paid by the Landowner~~ **Assessments shall be paid according to the crop share percentages as recorded at the FSA office.** Exception: Cash rent Cotton Growers shall pay the entire assessment. Subsequent assessments shall be determined year by year based on projected costs and available outside funds.

~~8.5.~~ Collection of Assessments. Assessments shall be payable ~~in installments~~, as provided below:

(a) For the crop year of ~~2003~~ **2004**, the annual assessment shall be paid ~~by July 15, 2003, or within 15 days of the Farm Services Agency final certification date~~ **receipt of the assessment invoice.** ~~Assessments for subsequent years shall be paid as follows:~~

~~(b) The initial payment shall be paid at the time the Cotton Grower reports the Intended Planting Acreage. The initial payment shall be an amount equal to the Cotton Grower's Intended Planted Acreage multiplied by fifty percent (50%) of the applicable Assessment. Cotton Growers shall make such payments payable to the "Arkansas State Plant Board" and deliver the payment to the Plant Board, or its designated agent, upon reporting their Intended Planting Acreage, but no later than May 31 of each year in which such Assessments are payable. Cotton Growers who fail to pay the initial payment by May 31 shall be subject to a penalty of up to Three Dollars (\$3.00) per acre for unpaid acreage, based on planted cotton acreage.~~

~~(c) The balance of the annual Assessment shall be paid at the time the Cotton Grower certifies the cotton acreage. Cotton Growers shall make such payments payable to the "Arkansas State Plant Board" and deliver the payment to the Plant Board, or its designated agent, upon certifying their actual planted cotton acreage, but no later than July 15 of each year in which such Assessments are payable. Cotton Growers who fail to pay the final payment by July 15 shall be subject to a penalty of up to Three Dollars (\$3.00) per acre for unpaid acreage, based on their planted cotton acreage.~~

~~(d)~~ (b) In the event an Assessment will be paid by more than one person, e.g. land owner and tenant, all said Cotton Growers, or their respective attorneys-in-fact, shall execute the applicable reports prescribed by these rules. ~~Notwithstanding the number of Cotton Growers sharing in any Assessment, the Grower's Compliance Certificate described below shall not be issued until the entire Assessment, and any applicable penalties, are paid as required.~~

~~(e)~~**(c)** In the event a Cotton Grower fails to pay Assessments and/or penalties as required under these rules, pursuant to Ark. Code Ann. § 2-16-617(c) and (d)(2), the Plant Board may file a lien with the appropriate county office and the Arkansas Secretary of State on the cotton subject to such assessments and on the Cotton Grower's subsequent cotton crops or on the land where the cotton was produced until all such amounts are paid in full.

~~9. Grower's Compliance Certificate. Pursuant to Ark. Code Ann. § 2-16-617(d), no gins in the State of Arkansas shall gin any cotton grown in an eradication zone in which field operations of the Boll Weevil Eradication Program are in effect, or from any other state, unless and until that Cotton Grower files with the gin a Grower's Compliance Certificate issued by the Plant Board certifying that said Cotton Grower has paid all fees, Assessments, penalties, and costs imposed and required pursuant to § 2-16-601 et seq., as amended, or proof of exemption therefrom as provided in paragraph 12 below. It is the responsibility of each Cotton Grower to procure a Grower's Compliance Certificate for the crop year for each FSA farm number on which cotton is planted, or proof that an exemption for compliance has been granted from the Plant Board. The Cotton Grower must file the Grower's Compliance Certificate with their gin each crop year.~~

~~10. Ginner's Penalty. Any gin that gins cotton for any Cotton Grower who has not filed a current valid Grower's Compliance Certificate or proof of exemption issued by the Plant Board shall be subject to a penalty in the amount of \$50.00 per bale for each bale ginned for such noncomplying Cotton Grower. This provision does not prohibit the movement of seed cotton within the State of Arkansas for protection from loss or efficient storage prior to ginning.~~

~~11. Penalties. The Plant Board shall assess Cotton Growers penalties for failure to comply with the reporting and/or payment requirements of these Regulations. Penalties are payable in full to the Arkansas State Plant Board within thirty (30) days of the date of the penalty assessment. Any such penalties assessed must be paid before the Plant Board may issue a Grower's Compliance Certificate under Section V, Paragraph 10 of these Regulations.~~

~~12.6.~~ **12.6.** Appeal of Penalties. Unless specifically provided for elsewhere in these rules, any person (Cotton Grower, gin or otherwise) assessed a penalty under these rules may appeal the penalty assessment to the Plant Board within thirty (30) days of the date of the penalty assessment. Such appeal must include all information upon which the appealing party bases its appeal.

~~13.7.~~ **13.7.** Limit on Penalties. Section V provides for various penalties in connection with reporting acreage and paying assessments, each of which is a separate violation and cause for penalty. Notwithstanding the type of penalties imposed under Section V, the total amount of penalties assessed against a particular Cotton Grower shall not exceed \$10.00 per acre of cotton for the crop year and acreage in issue.

Section VI Cotton Stalk Destruction Incentive. If during the Boll Weevil Eradication Program, seasonal growing conditions promote early maturation and harvesting of cotton in Arkansas, the Plant Board may, upon recommendation from the Arkansas Cotton Grower's Organization, Inc., establish a per acre incentive credit for early stalk destruction. Such incentive credit shall be applied to

the Cotton Grower's Assessment for the following year. In the event a Cotton Grower's Certified Acreage in the following year is not sufficient to fully consume the incentive credit in such following year, the Cotton Grower may apply to the Plant Board for a refund of the unused incentive credit, using forms prescribed by the Plant Board. The rate per acre of any such incentive credit, whether uniform for the entire State, or variable, shall be established and made available to all participating Cotton Growers no later than September 1 of the current growing year. No incentive credit established under this paragraph shall be credited or paid to the Cotton Grower by the Plant Board until the date of the Cotton Grower's stalk destruction has been confirmed to the Plant Board by eradication program personnel.

Section VII Planting Cotton in the Eradication Zone.

1. Prohibited Planting. Pursuant to Ark. Code Ann. § 2-16-610(b)(1), the Plant Board may prohibit the planting of cotton in designated areas where Boll Weevil eradication treatments cannot be effectively or legally applied due to factors concerning the public welfare if determined by the Plant Board that planting cotton jeopardizes the success of the program ("Prohibited Planting Area"). The Plant Board shall identify all Prohibited Planting Areas no later than March 1 of each year. Notice of the Prohibited Planting Area shall be published in a local newspaper of general circulation covering the Prohibited Planting Area at least once a week for four (4) consecutive weeks in the month of March. In the event a Prohibited Planting Area is not designated by March 1 of the year in issue, the Plant Board's purchase or destruction of cotton shall be in accordance with Section IX below.

2. Notice of Destruction. Pursuant to Ark. Code Ann. § 2-16-611(b), the Plant Board may by written order require the destruction of cotton planted in a Prohibited Planting Area after publication of the first notice required in paragraph 1 above. Said order shall be delivered to the Cotton Grower via certified United States mail. The order shall identify the cotton to be destroyed by Township, Range, and Section, or portion thereof. The order shall specify the date by which the Cotton Grower must destroy the crop at the Cotton Grower's expense, which date shall be at least ten (10) calendar days after the date of the order. The order shall further state that in the event the Cotton Grower does not destroy the cotton by the specified date, the Plant Board will destroy the cotton and assess the cost of destruction against the Cotton Grower. The Assessment under this section shall be payable within thirty (30) calendar days after destruction and shall be treated as any Assessment for purpose of enforcing these rules. Provided, however, the Cotton Grower may appeal an order under this paragraph to the Director of the Plant Board. The appeal must be received by the Plant Board within ten (10) calendar days of the date of the order. The Director of the Plant Board shall issue an order on the appeal within ten (10) calendar days of the Plant Board's receipt of the appeal.

3. Non-Commercial Cotton. Non-commercial cotton shall not be planted in an eradication zone in which field operations of the Boll Weevil Eradication Program are in effect without a waiver issued in writing by the Plant Board. Application for a waiver shall be submitted in writing and the Plant Board's decision to grant or deny the waiver may be based on the following:

- (a) Location of Growing area;
- (b) Pest conditions in the growing area;
- (c) Size of the growing area;
- (d) Accessibility of the growing area; and
- (e) Any stipulations set forth in a compliance agreement between the applicant and the Plant Board that are necessary to the Boll Weevil Eradication Program.

Section VIII Treatment of Boll Weevil in the Eradication Zones. The eradication of the Boll Weevil in an eradication zone shall be executed by the Plant Board according to established Boll Weevil Eradication protocols. The Plant Board may enter into Cooperative Agreements in order to carry out the Eradication Program.

Section IX Quarantine. Establishing Quarantine. In carrying out the purpose of these rules, the Plant Board may designate a quarantine area in accordance Ark. Code Ann. § 2-16-609.

Section X Issuance of Certificates and Compliance Agreements, Cancellations, Attachments ~~and Cotton Gin Certificates~~. Certificates may be issued for the movement of regulated articles from, into or through a regulated area, as determined to be necessary by the Plant Board.

Section XI Scientific Purposes. All cotton planted within the state of Arkansas notwithstanding the size of the acreage or plant is subject to the coverage of these rules, provided, however, the Plant Board may designate experimental areas for experiments designed to contribute to the development of scientific knowledge deemed of importance to the production of cotton. Cotton Growers in designated experimental areas and affected thereby, may be exempted from specified requirements of these rules, provided, however, that such Cotton Growers abide by a Compliance Agreement applicable to the experimental areas.

Section XII Entry of Authorized Personnel Upon Properties. Pursuant to Ark. Code Ann. § 2-16-607(b), Plant Board or authorized personnel are authorized to inspect any fields or premises and any property located therein or thereon for the purpose of determining whether such property is infested with the Boll Weevil. Such inspections must be conducted between sunrise and sunset. Such inspections include, but are not limited to, taking of specimens, examining and obtaining records, and applying or supervising treatments to the soil, plants or any regulated articles. This may include removal and destruction of plants, plant parts, or other regulated articles.

Section XIII Restricting Access to Eradication Zone and Regulated Area. Pursuant to Ark. Code Ann. § 2-16-605, the Plant Board may issue rules that restrict entry by unauthorized persons or any other activities affecting, or affected by,

the Boll Weevil Eradication Program on any premises in an eradication zone or in any regulated area.

Section XIV If any other regulations of the ASPB conflict with these regulations; these regulations will control.